



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

Francis L. Daniel  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT**

### **ISSUED TO**

### **BASF CORPORATION**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and BASF Corporation, for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "BASF" means BASF Corporation, certified to do business in Virginia and its successors and assigns.
7. "VPDES" means the Virginia Pollutant Discharge Elimination System as described in Virginia Regulations 9 VAC 25-31-10 *et seq.*

8. “Permit” means VPDES Permit No. VA0003387, which was issued on April 19, 2000, and expired on April 19, 2005. The Permit was administratively continued and was re-issued July 6, 2005, and expires July 5, 2010.
9. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

### **SECTION C: Finding of Facts and Conclusions of Law**

1. BASF owns and operates a superabsorbent material manufacturing facility located at 3340 West Norfolk Road, Portsmouth, VA (hereinafter referred to as the “Facility”).
2. Pursuant to the Permit, BASF is authorized to discharge process wastewater and regulated industrial stormwater from the Facility. These waters discharge into the Western Branch of the Elizabeth River.
3. Pursuant to a DEQ-approved remediation plan, former owners of the Facility completed construction of a storm water treatment system in April 2005, the purpose of which is to address historical contamination present at the Facility.
4. On May 18, 2005 treated water from one portion of the treatment system was being re-circulated to another portion of the system in order to address odors that had developed. A new hose connected to the circulation pump suddenly failed and treated water discharged through a nearby fence onto adjoining property. Reportedly no more than 50,000 gallons of treated water was released from the system. Approximately 20,000 gallons were recovered. The remaining volume (approximately 30,000 gallons) discharged to the Western Branch of the Elizabeth River.
5. The discharge was discovered at 11:55 PM during a system check by a BASF operator, who had checked the system at 11:00 PM and found no problems. The approximate discharge quantity was estimated based on the elapsed time between discovery and the previous inspection. The discharge was reported to TRO at 2:08 AM the same night, within 24 hours as required by the Permit.
6. The treatment system contractor reportedly instituted prompt corrective action by installing a new, reinforced hose and stationing a full time attendant at the pump. The re-circulation process was discontinued after seven more days. The construction project has since been completed.
7. Virginia Code § 62.1-44.5 and 9 VAC 25-31-50 of the Regulations prohibit waste discharges or other alterations of State waters except as authorized by permit. BASF did not have a permit for the discharge to State waters that occurred on May 18, 2005. BASF violated the Virginia Code and the Regulations by discharging pollutants to State waters from the BASF Facility on May 18, 2005.

8. BASF was issued Notice of Violation #W2005-06-T-0001 on June 10, 2005 for the unpermitted discharge that occurred May 18, 2005. This Notice of Violation advised BASF of the unpermitted discharge and applicable regulatory citations.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders BASF, and BASF agrees, to pay a civil charge of \$7,000 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include BASF's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of BASF, for good cause shown by BASF, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BASF admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. BASF consents to the venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BASF declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right

to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by BASF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BASF shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. BASF shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BASF shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which BASF intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BASF. Notwithstanding the foregoing, BASF agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BASF. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BASF from its obligation to comply with any statute, regulation, permit condition, other order in effect, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, BASF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16<sup>th</sup> day of March, 2006.

Francis L. Daniel  
Francis L. Daniel, Tidewater Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

BASF Corporation voluntarily agrees to the issuance of this Order.

By: Kevin Heitzhaus

Date: Dec 2, 2005

Commonwealth of Virginia  
City/County of Portsmouth

The foregoing document was signed and acknowledged before me this 2<sup>nd</sup> day of

December, 2005, by Kevin HEITZHAUS, who is  
(name)  
Site Manager of BASF Corporation, on behalf of BASF.  
(title)

Catherine J. Gibson  
Notary Public

Catherine J. Gibson, Notary Public  
City of Suffolk, Commonwealth of Virginia  
Commission Expires: July 31, 2009

